

**REMARKS**

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-40 remain pending. Claims 1, 14, 25, and 32 are independent.

SCOPE OF CLAIMS NOT ALTERED

Some of the claims have been amended in this Reply. The amendments merely clarify the invention or address informal issues. It is intended that the scope of the claims are not narrowed by the amendments.

PROVISIONAL DOUBLE PATENTING REJECTION – 09/480,107

Claims 1-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of copending application Serial No. 09/480,107. It should be noted that the copending application has been issued as U.S. Patent No. 6,963,523 on November 8, 2005.

Applicant does not necessarily agree with the Examiner's allegation. However, a Terminal Disclaimer is filed herewith to promote the progress of the prosecution. Applicant respectfully requests that the rejection of claims 1-40

under the judicially created doctrine of obviousness-type double patenting be withdrawn.

§ 102 REJECTION – KULAKOWSKI

Claims 1-6 and 14-17 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Kulakowski et al. (USP 5,303,219). Applicant respectfully traverses.

Kulakowski is directed toward detecting excessive spare sector consumption of a disk due to temporary contamination sources such as dust and recovering the good sectors after the disk is cleaned. *See Kulakowski, column 1, lines 5-9.* Kulakowski discloses that defects in optical disks are generally of two types. One type is a defect in the structure of disk itself. The second type is a defect created by contamination due to dust or debris on the surface of the optical disk. *See Kulakowski, column 1, lines 21-52.* The first defect type is considered to be permanent and therefore, the defective sectors are presumed to be non-recoverable. However, the second type of defect may be recoverable if the contamination is removed by cleaning the disk. Kulakowski is directed toward distinguishing the two types of defects and

recleaning sectors of the second type of defect after the disk is cleaned. *See Kulakowski, column 2, lines 35-39.*

Kulakowski contemplates that spare sectors will always be present in the disk. For example, Kulakowski clearly indicates that during the formatting process, defective sectors are found and alternate sectors are assigned from the list of spare sectors. The defective sector and replacement sector addresses are stored in the primary defect list (PDL) area of the DMA structure. The addresses of defective sector locations encountered during use are stored in the secondary defect list (SDL) along with the address of their respective associated replacement sectors. *See Kulakowski, column 5, lines 3-16.* It is clear that Kulakowski always contemplates the presence of the sectors during the initial formatting and during the use.

Indeed, Kulakowski discloses that the user is warned when a predetermined threshold percentage amount of the spare area are consumed due to the defects. *See Kulakowski, Figs. 8, 9A, and 9B and related descriptions.* This only makes sense if spare area is always assigned in the disk.

Figure 9C of Kulakowski describes the formatting process in which the defective areas are reclaimed as being usable. *See also, column 7, line 40 - column 8, line 26.* There is no description whatsoever regarding whether it is

possible to indicate that no spare area is assigned. Indeed, column 7, lines 55-59 state "if that address is present in the SDL, it is eliminated at Step 166 as a sector which can be reclaimed." This merely describes a conventional formatting process.

Contrary to the Examiner's allegation, it is clear that Kulakowski cannot teach or suggest the feature of resetting the location information of the spare area to indicate at least that there is no spare area assigned as recited in claim 1. For at least this reason, independent claim 1 is distinguishable over Kulakowski.

Independent claim 14 recites, in part "resetting the second information in response to a formatting request to indicate at least that there is no spare area assigned." It is clear that claim 14 is distinguishable over Kulakowski.

Claims 2-6 and 15-17 depend from independent claims 1, and 14 directly or indirectly. Therefore, for at least the reasons stated with respect to the independent claims, these dependent claims are also distinguishable over Kulakowski.

Applicant respectfully requests that the rejection of claims 1-6 and 14-17 based on Kulakowski be withdrawn.

§ 103 REJECTION – KULAKOWSKI, RELATED ART

Claims 7-13 and 18-40 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kulakowski in view of the related art of the present specification. Applicant respectfully traverse.

First, Applicant does not admit that the related art described in the present application is prior art.

Regarding claims 7-13 and 18-24, it is noted that these claims depend from independent claims 1, or 14 directly or indirectly. It has been demonstrated above that claims 1 and 14 are distinguishable over Kulakowski. The related art is not relied upon to correct for at least the above-noted deficiencies of Kulakowski. Therefore, independent claims 1 and 14 are distinguishable over the combination of Kulakowski and the related art.

Then, for at least due to the dependency thereon, claims 7-13 and 18-24 are also distinguishable over the combination of Kulakowski and the related art.

Independent claim 25 recites, in part "resetting the second information ... indicating that there is no supplementary spare area assigned." It is clear that claim 25 is distinguishable over the combination of Kulakowski and the related art.

Independent claim 32 recites, in part "wherein .... the second information is reset to indicate that there is no longer a spare area assigned." Again, it is

clear that claim 32 is distinguishable over the combination of Kulakowski and the related art.

Claims 26-31 and 33-40 depend from independent claims 25 or 32 directly or indirectly. Therefore, for at least the reasons stated with respect to claims 25 and 32, the dependent claims are also distinguishable over the combination of Kulakowski and the related art.

Applicant respectfully request that the rejection of claims 7-13 and 18-40 based on Kulakowski and the related art be withdrawn.

### **CONCLUSION**

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

**Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant respectfully petitions for a three (3) month extension of time for filing a reply in connection with the present application, and the required fee is attached hereto.**

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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